Filed 9/29/14 In re Abraham R. CA4/1

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ABRAHAM R., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. ABRAHAM R., Defendant and Appellant.	D065189 (Super. Ct. No. J233628)

APPEAL from a judgment of the Superior Court of San Diego County, Richard R. Monroy, Judge. Affirmed as modified.

Bird Rock Law Group and Andrea S. Bitar, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

On March 12, 2012, while in class, 14-year-old student Abraham R. touched a teaching assistant's breast twice and touched her vaginal area over her clothing once. The juvenile court entered a true finding of misdemeanor sexual battery (Pen. Code, § 243.4, subd. (e)(1)), declared Abraham a ward and placed him on probation. Over Abraham's objection, the court imposed the following probation condition: "The minor is not to possess any pornographic material including computer files and disks, nor frequent web sites or bookstores or any other place the minor knows or reasonably should know contains pornographic material."

Abraham appeals, contending the probation condition is unconstitutionally vague because "frequent" is imprecise. He asks this court to strike the condition or substitute "visit or remain in" for "frequent." Respondent concedes "that the term 'frequent' should be modified to remedy the vagueness."

Abraham's contention presents a question of law which we review de novo. (*In re Sheena K.* (2007) 40 Cal.4th 875, 887 ["a challenge to a term of probation on the ground of unconstitutional vagueness . . . that is capable of correction without reference to the particular sentencing record developed in the trial court *can* be said to present a pure question of law"]; *In re A.S.* (2014) 227 Cal.App.4th 400, 409 [vagueness challenge to probation condition is reviewed de novo].)

"[T]he word 'frequent' rendered the condition unconstitutionally vague, because it is both obscure and has multiple meanings." (*People v. Leon* (2010) 181 Cal.App.4th 943, 952.) To remedy the vagueness, we order the condition amended to read: "The minor is not to possess any pornographic material including computer files and disks; is

not to visit any web site the minor knows or reasonably should know contains pornographic material; and is not to visit or remain in bookstores or any other place the minor knows or reasonably should know contains pornographic material." (*Ibid*.)

DISPOSITION

Condition of probation number 33 is modified to read as follows: "The minor is not to possess any pornographic material including computer files and disks; is not to visit any web site the minor knows or reasonably should know contains pornographic material; and is not to visit or remain in bookstores or any other place the minor knows or reasonably should know contains pornographic material." As so modified, the judgment is affirmed.

IRION, J.

WE CONCUR:

HUFFMAN, Acting P. J.

McDONALD, J.